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No. 86-831

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

PHILLIPS PETROLEUM COMPANY,
Petitioner,

v.

SAM RICHARDSON, JR., et al.
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Should federal courts apply the doctrine of collateral estoppel to preclude the consideration of factual issues unresolved in a prior proceeding before a state administrative agency?

2. Should federal courts apply the doctrine of collateral estoppel to preclude the consideration of certain issues that have not yet been fully and fairly adjudicated in order to facilitate judicial economy?

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STATEMENT OF THE CASE

In 1976, the Respondents, owners of oil and gas interests in Ouachita County, Arkansas, brought an action before the Arkansas Oil and Gas Commission (Commission) requesting an order to prohibit the Petitioner's operation of a unitized secondary recovery project on the Petitioner's Ouachita County property. Following a full hearing, the Respondents' request was denied without prejudice. The Commission found that the Respondents had not demonstrated that they had suffered irreparable harm from the project, nor that its operation violated the Commission's orders.

In 1979, the Respondents again brought an action with the Commission seeking increased safeguards for the project and a

suspension of the Petitioner's authorization to operate the project if the safeguards were not followed. Following a full hearing, the Commission denied the Respondents' application.

Thereafter, the Respondents appealed the Commission's 1979 decision in the Arkansas state Circuit Court. The court affirmed the Commission's findings, yet noted that the Respondents' "rights to proceed against [the Petitioner] for any perceived damages to their property rights are not affected by the action of the Commission" (Phillips Appendix F at 31a). The parties did not appeal the court's decision.

In 1981, the Respondents brought an action for tort, nuisance, and negligence seeking damages in an Arkansas state court.

The Petitioner's motion to remove the case to the Western District Court of Arkansas was granted. The Petitioner also moved for dismissal on the ground that the Commission's administrative rulings barred the Respondents' tort action. The district court denied the motion on the ground that the Commission was not able to grant damages under Arkansas law and that the Commission's proceedings involved the consideration of different issues than those presented in district court.

Subsequently, the district court denied a motion by the Petitioner for summary judgment, but granted a partial summary judgment for the Petitioner, reasoning that the state court's affirmation of the Commission's finding should have a collateral estoppel effect regarding

the findings of fact and issues that were necessarily decided by the Commission. The district court dismissed the Respondents' amended complaint after the Respondents indicated that the court's collateral estoppel ruling had the effect of precluding the Respondents' action.

On appeal, the United States Court of Appeals for the Eighth Circuit reversed the district court's judgment and remanded the case for trial. The Eighth Circuit determined that the Commission did not resolve the issues pertaining to the damages suffered by the Respondents short of irreparable harm. Therefore, the Eighth Circuit concluded that the Commission's findings should not be given collateral estoppel effect in the Respondents' tort suit.

The Petitioner subsequently sought a rehearing and a rehearing en banc. These petitions were denied, with the majority of the Eighth Circuit justices concluding that the issues resolved by the Commission were not the same as the issue presented in the Respondents' tort action.

The Petitioner has now filed a petition for a writ of certiorari with the Supreme Court of the United States.

ARGUMENT

I. THE PETITION SHOULD BE DENIED SINCE THE EIGHTH CIRCUIT'S REFUSAL TO APPLY THE DOCTRINE OF COLLATERAL ESTOPPEL IS FULLY CONSISTENT WITH THE CONTROLLING FEDERAL LAW IN THAT THE ISSUE WAS NOT FULLY AND FAIRLY ADJUDICATED.

Contrary to the Petitioner's contentions, the Eighth Circuit's refusal to apply the doctrine of collateral estoppel is completely in accord with the controlling federal authority pertaining to the doctrine. It is well settled that the doctrine can only be applied in cases where the issue in question has been accorded thorough consideration in a prior adjudication. The authorities cited by the Petitioner illustrate this requirement well.

In Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979), this Court addressed the issue of the use of collateral estoppel offensively. The majority opinion, set forth by Justice Stewart, presented the fundamental rule that the doctrine of collateral estoppel applies only to preclude the relitigation of issues actually litigated and necessary to the outcome of the initial adjudication. Id. at 327 n.5 (citing 1B J. Moore, Moore's Federal Practice ¶ 0.405[1] at 622-24 (2d ed. 1974); Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955); Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591, 597 (1948); Cromwell v. County of Sac, 94 U.S. 351, 352-53 (1876)).

Similarly, in Blonder-Tongue Laboratories, Inc. v. University of Illinois

Foundation, 402 U.S. 313 (1971), this Court stressed the significance of the full and fair resolution of the issue in question in an initial adjudication, as demonstrated in the following passage:

> Moreover, we do not suggest, without legislative guidance, that a plea of estoppel by an infringement or royalty suit defendant must automatically be accepted once the defendant in support of his plea identifies the issue in suit as the identical question finally decided against the patentee or one of his privies in previous litigation. Rather, the patentee-plaintiff must be permitted to demonstrate, if he can, that he did not have "a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time." Eisel v. Columbia Packing Co., 181 F.Supp. 298, 301 (Mass. 1960).

Id. at 332-33 (footnote omitted).

The Supreme Court's holdings in the cases of United States v. Utah Construction

& Mining Co., 384 U.S. 394 (1966) and University of Tennessee v. Elliott, 106 S. Ct. 3220 (1986) continue to adhere to these basic requirements for the application of the doctrine of collateral estoppel. Those cases are relevant to the present case since they indicate that the doctrine of collateral estoppel may be applied in situations where an administrative body does not have the authority to decide a particular issue, such as damages, but necessarily has determined the facts pertaining to that issue while addressing a separate issue that is within its authority. United States v. Utah Construction & Mining Co., supra, 384 U.S. at 418-19; University of Tennessee v. Elliott, supra, 106 S. Ct. at 3226. Despite the breadth of these rulings, they do not dispense with

the prerequisite that the administrative body actually address and resolve the issues to which the doctrine is to be applied. Thus, this court set forth several criteria in Utah Construction to be utilized in determining whether the doctrine should be applied in such cases: (1) the administrative body must have been acting in a judicial (or quasi-judicial) capacity; (2) the body must have actually resolved disputed issues of fact which were properly before it; and (3) the parties must have had an adequate opportunity to litigate the facts in the proceedings. 384 U.S. at 422. In the recent Elliott decision, this Court reaffirmed not only the general applicability of the doctrine of collateral estoppel to certain adjudications by administrative bodies, but also

the aforementioned criteria when it remanded the case before it to the lower court for the purpose of ascertaining whether the criteria had been satisfied. 106 S. Ct. at 3227.

In the present case, the Eighth Circuit's refusal to apply the doctrine of collateral estoppel to the Commission's findings is in complete accord with the basic tenets of the doctrine set forth in Utah Construction and Elliott. Notwithstanding the Petitioner's inaccurate characterization of the Eighth Circuit's rationale for its holding, the court's refusal to apply the doctrine in the present case was actually based upon the ground that the Commission never resolved the facts pertaining to the issue of the Respondents' damages except to conclude

that the Respondents had not suffered irreparable harm warranting injunctive relief. The court found that the record of the Commission's proceedings demonstrated that the Commission members recognized its lack of authority to award monetary damages pursuant to Arkansas law, and therefore deliberately chose not to make a finding as to issues pertaining to damages short of irreparable harm. Richardson v. Phillips Petroleum Co., 791 F.2d 641, 645-46 (8th Cir. 1986). The Petitioner disagrees with the Eighth Circuit's conclusion regarding this point, and relies on certain language appearing in the Commission's 1979 findings of fact that indicate that the Respondents did not present sufficient evidence to demonstrate the full range of injuries that they suffered from the Petitioner's

operations (Phillips Petition at 6 n.10, 7). It suffices to say that the Eighth Circuit examined the full record of the Commission's proceedings and concluded that, notwithstanding the language relied on by the Petitioner, the Commission did not actually decide the issue of the Respondents' damages short of irreparable harm.[1] This conclusion was reiterated by the Eighth Circuit in its August 25, 1986 order denying the Petitioner's motion for

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[1] Equally without merit is the Petitioner's suggestion that the Respondents "stipulated themselves out of federal court" by indicating that they were unable to proceed with their action in the district court following that court's ruling that the Commission's findings should be given collateral estoppel effect. This statement by the Respondents, far from being an admission of the correctness of the district court's ruling, simply sets forth the obvious conclusion that the Respondents were unable to proceed in light of the court's decision.

rehearing en banc. 799 F.2d 426, 427 (8th Cir. 1986).

The Petitioner also insists that the determination of facts pertaining to the full range of an aggrieved party's injuries is a threshold requirement for a decision to grant or withhold injunctive relief, but common sense suggests otherwise. Indeed, the interests of judicial economy seem to be best served by reaching only those facts necessary to adjudicate the issue before the administrative body or court.

Since the record of the Commission's proceedings indicated that the Commission did not resolve as a threshold issue the facts regarding the full range of harm suffered by the Respondents, the Eighth Circuit considered whether the Commission's treatment of the issue of irreparable harm

was itself sufficient to constitute a full and fair adjudication of the issue of damages. Pursuant to the Supreme Court's ruling in Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984), a federal court must apply the law of the forum state regarding the preclusive effect of state adjudications. The Eighth Circuit in Richardson found that under the law of Arkansas, the legal concepts and burdens of proof presented in an administrative action for injunctive relief are deemed to be distinct from those involved in an action for compensatory damages in state court; thus the adjudication of the issue of irreparable harm did not incidently also serve to adjudicate the issue of compensatory damages. 791 F.2d at 645-47.

The conclusion of the Eighth Circuit is in complete accord with the holdings of United States v. Utah Construction & Mining Co., supra, and University of Tennessee v. Elliott, supra. The Eighth Circuit in Richardson expressly recognized that "there are likely many instances in which it might be appropriate to find that the Commission's findings have a collateral estoppel effect on the litigation of issues in a related state court action." Id. at 646.

The court did not indicate that an administrative body could never resolve factual issues relevant to the issue of compensatory damages while addressing a case involving the remedy of injunctive relief. Rather, the Eighth Circuit merely concluded that in the present case, the factual issues regarding the full scope of

the Respondents' damages had not actually been resolved by the Commission, regardless of the Commission's authority to do so.

In light of the foregoing discussion, it is clear that the Petitioner's argument that the Eighth Circuit's holding in this case will have the effect of weakening this court's rulings in Utah Construction and Elliott is without merit. The Eighth Circuit has merely recognized that the administrative body must actually adjudicate an issue before it can be given a collateral estoppel effect, a conclusion that is in complete accord with this Court's own decisions.

II. THE DOCTRINE OF COLLATERAL ESTOPPEL SHOULD NOT BE APPLIED TO PRECLUDE THE FAIR AND FULL LITIGATION OF AN ISSUE MERELY TO FACILITATE JUDICIAL ECONOMY.

As indicated in the first section of this brief, the Petitioner has erroneously characterized the basis for the Eighth Circuit's decision in this case. The court relied on the Commission's actual failure to determine the issue of damages rather than the Commission's lack of authority to do so under the law of Arkansas.

There is no authority to support the argument that the requirement of a full and fair adjudication of an issue as a prerequisite to the application of the doctrine of collateral estoppel may be dispensed with in order to promote judicial efficiency and finality. While the

Respondents acknowledge the importance of these considerations, such factors do not take precedence over a litigant's right to have his case fully and fairly adjudicated. Therefore, the Petitioner's argument is without merit.

CONCLUSION

In light of the fact that the Eighth Circuit's decision is consistent with this Court's rulings regarding collateral estoppel, and no conflict between circuits or important public issues are presented by this case, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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